REMARKS/ARGUMENTS

In the Office Action dated August 10, 2006, Claims 1-7, 9-17, 19-27, 29, 30, and 40-42 are pending, of which Claims 1, 11, and 21 are independent. The prior rejections under §§ 102 and 103 have been withdrawn. The Examiner's careful review and reconsideration of the claims is noted with appreciation.

Claims 1, 2, 5, 7, 10-12, 17, 20, and 41 are now rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,180,599 to Feldmeier, et al., and Claims 4, 6, 7, 14, 16, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Feldmeier, et al. Claims 9, 19, 41, and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Feldmeier, et al. in view of U.S. Patent No. 5,436,051 to Donaruma, et al. Claims 21-27, 29, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,752,614 to Nelson, et al. Claims 1-7, 9-17, 19, 20, and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson, et al. in view of Feldmeier, et al. In addition, the drawings are objected to under 37 CFR 1.83(a), and the rejection of Claim 42 under 35 U.S.C. § 112, first paragraph, has been maintained.

Claim 42 is canceled above. Accordingly, no rejections under § 112 remain.

Regarding the objection under 37 CFR 1.83(a), the Office Action states that the drawings are objected to "because they fail to show plastic material in the cross sectional views as described in the specification." Office Action, page 3. The application describes a bond that can be used to join a plastic closure and a plastic body portion. In particular, the application states that the base portion **12** and the closure **30** of the container **10** can be formed of plastic. Both the base portion **12**, and the closure **30** are illustrated, e.g., in the cross-sectional view presented in Figure 1 of the application. In Figure 1, each of the base portion and the base portion **12** and the closure **30** is shown to have a thickness, and the materials of the base portion and the base portion **12** and the closure **30** are indicated by hatching. The specification clearly states that each of these illustrated portions can be formed of plastic. Accordingly, Applicant respectfully submits that the drawings do show the plastic material as described in the application, and no new drawings are required. Therefore, withdrawal of the objection is requested.

Applicant now addresses the rejections under §§ 102 and 103. Claim 1 is directed to an easy-opening, retortable container that includes a plastic membrane having an outer peripheral area attached to the base portion by a radiation weakened bond, the radiation weakened bond being formed of an adhesive and having a predetermined tensile force strength. None of the cited references discloses a radiation weakened bond formed of an adhesive.

Claim 1 is rejected on two bases, first as being anticipated by Feldmeier, et al., and second as being obvious over Nelson, et al. in view of Feldmeier, et al.. In regard to the rejection of Claim 1 as being anticipated by Feldmeier, et al., the Office Action does not discuss any disclosure by Feldmeier, et al. of a radiation weakened bond. *See* Office Action, page 4. However, in connection with the obviousness rejection, the Office Action states:

> Feldmeier teaches it is known to join a membrane to a container opening via radiation weakened adhesive.

Office Action, page 6.

Applicant respectfully disagrees. Feldmeier, et al. is directed to a peelable seal formed by surface treating a polyacrylonitrile film to reduce the strength of a bond between the treated film and an adhesive. For example, the film sheet can be "treated by a corona discharge treatment prior to adhesion" to an opposing film sheet, so that the treated film sheet can be "subsequently adhered by an adhesive to the other film sheet." Feldmeier, et al. at col. 2, lines 27-39. Even if the corona discharge is a radiation treatment, the corona treatment is performed only on the film sheet, not the adhesive. Indeed, the adhesive of Feldmeier, et al. is not radiation weakened, and Feldmeier, et al. does not provide any teaching or suggestion for a radiation weakened adhesive.

Further, Applicant notes that Feldmeier, et al. is deficient for the very same reasons as U.S. Patent No. 4,857,369 to Oehlenschlager, et al., previously relied upon for the rejection of Claim 1. That is, any radiation weakening performed by Oehlenschlager, et al. occurs only before formation of the bond and, therefore, the heating operation of Oehlenschlager, et al. affects the surface of a fixing layer **10**, not any bond itself that is subsequently formed.

Claim 1 is clearly distinguished from a surface treatment that is performed prior to the application of adhesive. Indeed, Claim 1 was previously amended to recite that the radiation weakened bond is formed of an adhesive, an amendment that was asserted to raise new issues and that therefore required the filing of the RCE. As none of the newly cited references, including both Feldmeier, et al. and Nelson, et al., discloses a radiation weakened bond formed of an adhesive, Applicant respectfully submits that Claim 1 is allowable, as are each of the dependent Claims 2-7, 9, 10, 40, and 41.

Further, the dependent claims provide additional bases of distinction over Feldmeier, et al. For example, Claims 7, 10, and 41 were rejected as being anticipated by Feldmeier, et al. Claim 7 recites that the membrane, which has the outer peripheral area attached to the base portion by the radiation weakened bond, "includes oxygen scavengers disposed in polyolefin." The Office Action states in this regard:

> Wherein the container of Feldmeier is used to hold an edible product the material would inherently be a high barrier material and/or a plastic material having oxygen scavengers disposed therein.

Office Action, page 4.

Applicant disagrees. Claim 7 recites the use of oxygen scavengers in a specific material, i.e., polyolefin. Feldmeier, et al., on the other hand, is specifically directed to the use of particular materials that are not heat sealable in nature. Feldmeier, et al. does not disclose the use of polyolefin or the use of oxygen scavengers, and neither polyolefin nor oxygen scavengers are "inherent" in containers used to hold edible products.

Claim 10 recites that "the bond is weakened by microwave radiation." As noted above, Feldmeier, et al. discloses a corona surface treatment; however, Feldmeier, et al. teaches that the corona discharge is used to weaken the film sheet, not the bond formed of adhesive. In fact, the adhesive of Feldmeier, et al. is not even subjected to the corona surface treatment. Moreover, the Office Action does not refer to any disclosure of microwave radiation in Feldmeier, et al., and Applicant asserts that Feldmeier, et al. does not disclose the use of microwave radiation.

Claim 41 recites that "the radiation weakened adhesive consists of radiation weakened polyurethane." Feldmeier, et al. does not disclose the use of radiation weakened polyurethane. To the contrary, Feldmeier, et al. states that "[t]he present invention therefore concerns itself with the establishment of peelable, adhesive-based hermetic seals between two sheets of packaging material which are not heat sealable in nature, such as polyester, polyvinyl chloride polyamide and polyacrylonitrile films." Feldmeier, et al., col. 1, liens 62-66 (emphasis added). Feldmeier, et al. does not disclose the use of any radiation weakened polyurethane but rather teaches away from the use of polyurethane and instead toward the use of the other specified materials. Further, none the materials that are disclosed by Feldmeier, et al. and which are subjected to the corona treatment, is a "radiation weakened adhesive" as recited. In fact, Feldmeier, et al. specifically states that the packaging materials that are to be corona treated are "not heat sealable in nature."

Accordingly, Applicant submits that Claims, 7, 10, and 41 are not anticipated by Feldmeier, et al. and, further, that Feldmeier, et al., even in fair combination with the other cited references, does not render these claims obvious.

Independent Claim 11, which also stands rejected as being anticipated by Feldmeier, et al., is also directed to an easy-opening, retortable container and recites that the plastic membrane is "attached to the base portion by a bond having a predetermined shear force strength and configured to be radiation weakened to have a predetermined tensile force strength." Feldmeier, et al. does not disclose a structure with a bond that is configured to be radiation weakened to allow easy opening. Indeed, the reference does not disclose that any bond, once formed, can be weakened with radiation. Instead, and similar to Oehlenschlager, et al. that was previously relied upon for rejection of Claim 11, Feldmeier, et al. is specifically directed to a surface treatment and does not disclose any bond formed between two structures that can be radiation weakened after formation. Accordingly, Applicant submits that Claim 11 is allowable over Feldmeier, et al., as are each of the dependent claims.

Further, the claims depending from Claim 11 provide additional bases of distinction over Feldmeier, et al. For example, Claim 17 recites that "the membrane includes oxygen scavengers disposed in polyolefin," features not disclosed by Feldmeier, et al., as discussed above.

Regarding the rejections under § 103(a) based solely on Feldmeier, et al., Applicant respectfully traverses on the above grounds, i.e., the base claims are not anticipated or made obvious by Feldmeier, et al. Further, these dependent claims also provide further bases of distinction. For example, dependent Claims 6, 7, 16, and 17 are rejected under § 103(a) as being unpatentable over Feldmeier, et al. Claim 6 recites that "the membrane is formed of a coextruded sheet of polypropylene and ethylene vinyl alcohol." As noted above, Claim 7 recites that the membrane includes oxygen scavengers disposed in polyolefin. Claims 16 and 17, which depend from Claim 11, include similar features. In this regard, the Office Action states that it would have been obvious "to use any material including polypropylene, ethylene vinyl alcohol and oxygen scavenger disposed polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice." Office Action, page 5. Applicant disagrees because the substitution of materials is not obvious where the reference that is relied upon is directed to the use of a particular type of material and teaches away from the claimed invention.

Applicant also traverses the rejection of Claims 9, 19, and 41 as being unpatentable over Feldmeier, et al. in combination with Donaruma, et al. on the basis that each of these claims depends from Claim 1 or 11, and Donaruma, et al. fails to cure the deficiencies of Claims 1 and 11 that are noted above. For example, Donaruma, et al. does not teach the use of a radiation weakened bond formed of an adhesive or a bond configured to be radiation weakened to have a predetermined tensile force strength.

Independent Claim 21 is rejected under § 103(a) on the sole basis of being unpatentable over Nelson, et al. Claim 21 is directed to an easy-opening closure for hermetic sealing of a retortable container and recites a plastic member that is attached to a plastic end ring by a bond having a predetermined shear force strength and configured to be radiation weakened to have a predetermined tensile force strength, wherein the predetermined shear force strength of the bond is sufficient to withstand forces created during retort processing of the container, and the predetermined tensile force strength of the bond allows easy-opening of the container by peeling the membrane from the end ring. The Office Action acknowledges that "Nelson does not teach the ring and membrane are plastic," but nevertheless states that it would have been obvious "to use any material including polypropylene, ethylene vinyl alcohol and oxygen scavenger disposed polyolefin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice." Office Action, page 6.

Applicant respectfully disagrees. Claim 21 recites a configuration in which the plastic end ring, which can be joined to the retortable container, is attached to the plastic membrane by a bond formed of an adhesive. The adhesive, which is disposed between the plastic end ring and the plastic membrane, is configured to be radiation weakened to have the predetermined tensile force strength. Nelson, et al. does not teach this configuration or provide any motivation for this use of materials. To the contrary, Nelson, et al. specifically describes the use of other materials for the components, and does not provide any motivation for instead providing a configuration in which the adhesive can be radiation weakened. The "intended use" and thus the "suitability" of the materials for use in the device of Nelson, et al. do not include the claimed configuration. That is, Nelson, et al. does not suggest any reason for modifying the configuration so that the adhesive can be radiation weakened. Further, a modification of Nelson, et al. to include the recited materials for the "intended use" described in the present application relies on improper use of hindsight in light of the present invention. Accordingly, Applicant submits that Nelson, et al. does not teach or suggest the invention of Claim 21 and cannot be fairly modified to achieve the invention.

Nor does Nelson, et al. teach or suggest the features of the claims depending from Claim 21. For example, Claim 22 recites that "the plastic end ring is configured to be fusion welded to the container." Claim 30 recites that "the bond is adapted to be weakened by microwave radiation."

The other references cited in combination with Nelson, et al. (Feldmeier, et al. and Donaruma, et al.) fail to cure these deficiencies of Nelson, et al., as further described above. Accordingly, Applicant submits that Claim 21 and dependent Claims 22-27 and 30 are allowable over Nelson, et al., even in fair combination with the other cited references.

For the foregoing reasons, Applicant respectfully submits that the pending Claims 1-7, 9-17, 19-27, 29, 30, 40, and 41 are allowable.

* * * *

CONCLUSIONS

In view of the remarks presented above, Applicant submits that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

Nick Gallo

Nicholas F. Gallo
Registration No. 50,135

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
LEGAL01/13014352v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON October 12, 2006.